

GUILTY PLEA COLLOQUY

1. INTRODUCTION.

- Identify the case.
- Identify the prosecutor.
- Identify the defense counsel.
- Introduce myself.

2. CONSENT TO MAGISTRATE JUDGE. [Does not apply to petty offenses.]

- This case is assigned to district court judge Chief Judge Linda R. Reade.
- You have the right to have a district court judge preside over any guilty plea proceeding. As a magistrate judge, I can preside over this hearing, but only with your voluntary consent.
- Do you agree that this guilty plea proceeding may be conducted by me?
- Mr./Ms. Defense Counsel, am I correct that Defendant has signed a written consent form?

3. DEFENDANT PLACED UNDER OATH.

- Mr./Ms. Defendant, I am now going to place you under oath. Please stand. Do you solemnly swear or affirm that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth? You may be seated.
- You are now under oath. If you make any false statements, then you may be prosecuted for the crime of perjury or making a false statement and the government could use against you any statements which you make today.
- Do you understand that you are now under oath and are required to tell the truth?

4. ENSURING MENTAL CAPACITY.

- Please state your full name.
- How old are you? How far did you go in school? Do you have any difficulty reading or understanding the English language? It is important that you hear everything that is said in this hearing and that you understand all that you hear. If you have any problems hearing or understanding anything that comes up during this hearing, would you please let me know?
- Have you ever suffered from depression, anxiety, or any other mental illness? [If yes, have Defendant describe the problem; Do you think your mental health problems might affect your ability to understand the legal matters we will be talking about at this hearing today?]
- Have you ever abused drugs or alcohol? [If yes; Do you think your abuse of drugs or alcohol in the past might affect your ability to understand the legal matters we will be talking about at this hearing today?]
- Within the past week, have you used or taken any alcohol, drugs, or prescription medication? [If yes, have Defendant explain; Do you think this might affect your ability to understand the legal matters we will be talking about at this hearing today?]
- Do you know of any other reason why you might have difficulty understanding these proceedings?
- Mr./Ms. Defense Counsel, do you have any reason to believe the Defendant is not competent to change his/her plea?

5. NATURE OF THE CHARGES.

- You have been charged by Indictment/Information in _____ counts. Count 1 charges you with the crime of _____. [Etc.]. Do you understand what you have been charged with?
- Have you had a chance to discuss these charges in detail with your attorney?
- I have been advised that you now wish to change your plea and enter a plea of guilty to Counts _____ of the Indictment/Information. Is that true?

6. **RIGHT TO AN ATTORNEY.**

- Before I can accept your plea of guilty, I have to ask you certain questions to make sure you understand your rights.
- You have the right to a lawyer to help and represent you during every stage of this case. If at any time you cannot afford a lawyer, you are entitled to have a lawyer appointed at public expense.
- In this case, Attorney _____ has been appointed to represent you at public expense. His/her representation would continue throughout the time of trial at no expense to you.
- Do you understand your right to an attorney?
- Are you generally satisfied with the representation that you have received from your attorney?

7. **RIGHT TO A JURY TRIAL.**

- I also want to tell you about your trial rights.
- You have the right to a **speedy and public trial** before a jury of twelve people selected from a cross-section of this community. You and your lawyer would help choose the people who would serve on your jury. Any verdict by the jury would have to be unanimous, which means all twelve jurors would have to agree to the verdict. Your jurors would promise under oath to try your case fairly, based only on what is submitted into evidence at trial and the instructions given to them by the trial judge. Do you understand your right to a jury trial?
- There is a **presumption of innocence**. The judge would tell the jury that you are presumed innocent, and that the presumption of innocence remains with you unless and until, at the end of your trial, the prosecution has convinced the jury of your guilt beyond a reasonable doubt. The judge would also tell the jury that the presumption of innocence alone is enough for you to be acquitted of this charge/these charges. Do you understand that?

- You have the **right to Confrontation**. This means the prosecution would have to call its witnesses to testify under oath here in court. You would be able to see and hear their testimony, and they would be able to see you while they are testifying. Your attorney would not have to question the prosecution's witnesses at all, but if he/she wanted to, he/she could confront them by cross-examining them. Do you understand that by pleading guilty, you are giving up your right to confront witnesses?
- You have the **right to Present a Defense**. The burden of proof would remain on the prosecution throughout the trial. You would not have to put on a defense or produce any evidence. However, if you wanted to, you could present any relevant evidence to the jury. For example, you could make witnesses come to court by having subpoenas served on them. If you could not afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, I would make the government pay those costs and fees. Do you understand that by pleading guilty, you are giving up your right to present any defense?
- You also have the **right to remain silent**. You could testify at your trial if you wanted to, but you would not have to. If you decided not to testify, the prosecutor would not say anything about it to the jury. In fact, the judge would tell the jurors that you have a Constitutional right not to testify, and she would also tell them that they must not hold it against you if you do not testify. Do you understand that?
- In **summary**, if you plead guilty here today, you will have no trial. You will be judged guilty based on your plea, just as if a jury returned a guilty verdict against you. Do you understand that if you plead guilty you are giving up the right to a jury trial?

8. ELEMENTS AND FACTUAL BASIS.

- Before I can accept your plea of guilty, I must also establish that there exists an adequate factual basis to convict you on Count _____ of the Indictment/Information.
- [Elements.] The prosecution would have to prove all of the following elements beyond a reasonable doubt to the satisfaction of a unanimous jury: [The judge will recite the elements and obtain Defendant's admission on each element and for each count.]
- [Plea Agreement.] The court has been provided with a copy of the plea agreement entered into between the parties, which has been marked as Government's Exhibit 1. Mr./Ms. Prosecutor, is that being offered into evidence at this time? [Exhibit will be received.]
- Mr./Ms. Defendant, I would like to draw your attention to the last page of the agreement. Is that your signature? Did your attorney review the document with you in detail before you signed it? Do you understand all of the terms of the agreement? Do you have any questions about the plea agreement which you reached with the Government?
- [Stipulated Facts.] Mr./Ms. Defendant, I would like to draw your attention to paragraph ____ on page ____ of Exhibit 1. Are those your initials by that paragraph and the subparagraph? Do you admit that the information set forth in those paragraphs is true?
- Mr./Ms. Prosecutor, did I accurately describe the elements of the charge(s) to the defendant? Do you believe I have established an adequate factual basis for a guilty plea to the charge(s)?
- Mr./Ms. Defense Counsel, do you think your client understands the elements of the charge(s) against him/her? Do you believe I have established an adequate factual basis for the plea? Have you had full access to the Government's discovery materials? Do you believe they support a factual basis for a guilty plea to the charge(s)? Do you know of any possible

defenses to the charge(s) which you have not considered and discussed with your client?

9. PENALTIES.

- Mr./Ms. Defendant, I want to talk to you about the penalties which apply to the charges in this case.
 - (a) On Count _____, you could be sent to prison for up to _____ years (life) [and there is a mandatory minimum prison sentence of _____ years].
 - (b) Following your imprisonment, you could be placed on supervised release for up to _____ years (life) [and there is a mandatory minimum term of supervised release of _____ years].
 - (c) Also, you could be fined up to \$_____.
 - (d) In addition, you will have to pay a special assessment of \$100 (on each count to which you plead guilty, which would be a total of \$_____).
 - (e) The judge also has the power to order forfeiture of property and restitution.
- Do you understand the statutory penalties which are applicable in this case?
- [Sentencing Guidelines.] At the time of sentencing, the judge will perform a calculation under the federal sentencing guidelines, which are guidelines issued by the United States Sentencing Commission. This calculation will result in an "advisory guideline range," which is a range of months within which the Sentencing Commission suggests that you be sent to prison. The sentencing judge must consider this range in determining your sentence, but she is not required to sentence you within this range. So long as the sentence the judge gives you is reasonable, she can depart from the advisory guideline range based on the factors listed in the sentencing guidelines, or she can vary from the range based on the factors listed in the sentencing statutes. Do you understand all of that?

- [Plea Agreement.] Mr./Ms. Prosecutor, could you summarize for the record the terms of the plea agreement? Mr./Ms. Defense Counsel, is that a fair summary of the agreement?
- [Advisory Guideline Range.] Mr./Ms. Prosecutor, have you calculated the advisory guideline range which you believe is applicable? Mr./Ms. Defense Counsel, is that consistent with your calculation?
- Mr./Ms. Defendant, I have asked for these estimates just to give you an idea of what could happen at your sentencing hearing. You should understand that neither the lawyers nor I will be sentencing you. The sentencing judge has the responsibility for determining your sentence. She is not bound by the terms of any agreement entered into between the parties and is not bound by any recommendation of the attorneys. She may calculate a higher or lower guideline range than what has been predicted by the lawyers, or what we have talked about here.
- Also, as I indicated earlier, the sentencing guidelines are advisory only. The judge could depart or vary from the guidelines and impose any reasonable sentence permitted by law, which means you could receive a sentence below or above the advisory guideline range, and in fact, you could receive a sentence all the way up to the maximum statutory sentence, which is _____ years.
- [Mandatory Minimum Sentence.] You also should understand that however the guideline range is calculated, and regardless of whether the judge departs or varies from the guidelines, she can not sentence you below _____ years, which is the statutory mandatory minimum, even if she wants to. [Unless the safety valve applies or you provide substantial assistance to the Government and the United States Attorney's Office asks her to sentence you below the mandatory minimum. You should understand that even if you believe you have provided substantial assistance to the Government, there is

no guarantee the U.S. Attorney will file a departure motion or that the judge will sentence you below the mandatory minimum.]

- [Good Time.] You should understand that you will be in custody for all of any prison sentence you receive, reduced only by any credit for good time you may earn. You can earn a reduction in your prison sentence for “good time” of up to 15% of your sentence [but only if you are sentenced to more than one year in custody. If you are sentenced to a year or less in custody, you can not earn any good time, and you would have to serve all of your sentence in some type of custody.].
- Whatever sentence you receive, you will never see a parole board or be paroled out of prison because there is no parole in federal court. Do you have any questions about that?

[If the defendant is a U.S. citizen, the judge will say the following:]

- After you have served your prison sentence, you will be placed on supervised release, during which time your conduct will be monitored by a probation officer. There are a number of standard conditions of supervised release. You can not commit any federal, state, or local crimes, nor can you possess firearms, ammunition, or illegal controlled substances. The sentencing judge could also impose additional special conditions. If you violate any of the conditions of your supervised release, the judge could revoke your supervised release, and require you to serve in prison all or part of the time you otherwise would have been on supervised release. Do you understand the requirements of supervised release?
- As a result of this conviction, you will also be deprived of the right to vote, to serve on a jury, to hold public office, and to possess firearms and ammunition. Do you understand the loss of rights associated with a felony conviction?

[If the defendant is not a U.S. citizen, the judge will say the following:]

- After you have served your prison sentence, you'll be required to serve a term of supervised release. Since you are not a U.S. citizen, it is likely that you will be deported immediately after serving your prison sentence, and a condition of your supervised release will be that you not reenter the United States while on supervised release.
- If you reenter the United States while on supervised release, the judge likely would revoke your supervised release and require you to serve in prison all or part of the time you otherwise would have been on supervised release. This prison term would be in addition to any sentence you receive if you are convicted on a new charge of illegally reentering the United States.
- Do you have any questions about supervised release or removal from the United States?

10. COLLATERAL CONSEQUENCES.

[If this case involves FRAUD or other intentionally deceptive practices, the judge will say the following:]

- The sentencing judge could also order you to provide notice of your conviction to victims of the offense.

[If this is a SEX CRIME, the judge will say the following:]

- As a result of this conviction, you will be required to register as a sex offender with the national registry of sex offenders, and you will likely be required to register as a sex offender under the laws of the state where you live. Such registration may be required of you for the rest of your life. (The judge will say the following if the defendant will not be in custody following his/her plea: In fact, you should check with your local authorities to see if you're required, as a result of this plea, to register immediately as a sex offender under the laws of the state where you live.)
- Do you understand?

11. WITHDRAWAL OF GUILTY PLEA.

- Mr./Ms. Defendant, after your guilty plea is accepted by the District Judge, you will have no right to withdraw your guilty plea. Do you understand?

12. SENTENCING HEARING.

- [Presentence Investigation Report.] If you plead guilty here today, I will order a **presentence investigation** to be conducted by a probation officer. The probation officer will conduct a thorough investigation of this case and will then prepare a draft presentence investigation report. A copy of the draft report will be sent to the lawyers.
- You should go over the report carefully. Be sure to point out to your attorney any errors or omissions in the report so he/she can let the probation officer know about them. The probation officer will then change the report to make it complete and accurate.
- After the report has been finalized, it will be sent to the sentencing judge and copies of the report will be sent to the lawyers.
- You will then have a sentencing hearing. At the sentencing hearing, the parties can present witnesses and exhibits on any sentencing issue, and you will be given a chance to talk to the judge directly to tell her anything you want.
- Do you have any questions about the sentencing procedure?

13. RIGHT TO APPEAL.

- Mr./Ms. Prosecutor, does the plea agreement have any provisions waiving the right to appeal or to collaterally attack the sentence?
- Both you and the Government have the right to appeal the sentence to the Eighth Circuit Court of Appeals.
- Do you have any questions regarding your right to appeal?

14. ENSURING VOLUNTARINESS OF PLEA.

- Has anyone forced or pressured you to plead guilty, or made any promises to you to get you to plead guilty [other than what's in the plea agreement]?

- Mr./Ms. Defense Counsel, do you believe a guilty plea by your client to the charge(s) against him/her would be voluntary? Do you know of any legal reason why the plea should not be accepted?

15. CONCLUSION.

- Mr./Ms. Defense Counsel, do you know of anything the court has omitted which could affect the validity of the plea?
- Mr./Ms. Prosecutor, do you know of anything the court has omitted which could affect the validity of the plea?
- Mr./Ms. Defendant, we've covered a lot of information here today and I want to make sure that you understood it all, so you don't come back next week, or next month, or next year, and say you were confused or someone forced you to plead guilty.
 - Have you been able to understand everything we've talked about?
 - Do you have any questions about any aspect of it?
 - Has anyone forced or pressured you to plead guilty?
 - Is your guilty plea voluntary?
- Mr./Ms. Defendant, **FORMALLY AND FOR THE RECORD**, how do you plead to Count _____ of the Indictment/Information -- guilty or not guilty? (Repeat for any other counts.)
- The record should reflect that the defendant has pleaded guilty to [Counts _____ of] the Indictment/Information.

16. FINDING.

- **I find that:** the defendant is competent, (s)he fully understands the charge(s) against him/her; there's a factual basis for his/her plea(s); (s)he knows the maximum punishment that could be imposed on the charge(s); and (s)he knows his/her jury rights and has voluntarily waived those rights.
- **I further find that:** the defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises [other than the promises made by the Government in the plea agreement].

- Therefore, I find the defendant should be adjudged guilty based on his/her plea(s) of guilty.

17. REPORT AND RECOMMENDATION.

- I have signed and will file my Report and Recommendation, recommending that the defendant's guilty plea be accepted. Counsel will be provided with a copy of the Report and Recommendation.
- The parties are reminded that they have 14 days from today's date to file objections to the Report and Recommendation. If a party fails to file a timely objection, then the party will have waived the right to make the objection.
- After reviewing any objections, the District Judge may accept the Report and Recommendation, and the Defendant's plea of guilty, by simply entering a written order doing so.

18. PRESENTENCE INVESTIGATION REPORT.

- I hereby ORDER A PRESENTENCE INVESTIGATION REPORT. The parties should pay careful attention to the deadlines relating to the preparation of the report, as set out in Administrative Order 08-AO-13-P.
- **Judge [name of district court judge] will schedule a sentencing hearing in this case for a later date.**

19. DETENTION.

- [The judge will take care of any detention issues and, if appropriate, remand the defendant to the custody of the U.S. Marshal.]
- **IS THERE ANYTHING ELSE THAT NEEDS TO BE ADDRESSED AT THIS TIME? [Mr./Ms. Defense Counsel]? [Mr./Ms. Prosecutor]?**
- That concludes the hearing.